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*Editors Harvard Law Review:—*

Your January issue announced that Vol. 4 of the Selden Society publications, by Professor Maitland, was in the press. I am sure that your readers will be interested in not a few of the *formulæ* which the proofs are bringing to hand; for it should be stated that this volume will differ from the preceding volumes, *inter alia*, in being a collection of precedents. Professor Maitland is printing from MS. books of precedents dating in their earlier part as far back as about the year 1265.

In one of the earliest, a precedent is given of so interesting a character that I must beg the editors of THE REVIEW for space enough to print it, in advance of the publication of the volume in which it will appear. It is a precedent in a Court Baron (all these precedents are of Courts Baron) of what we should now speak of as a malicious interference with a contract, anticipating by six hundred years what the English judges struggled so much with, and some of them against, in the well-known cases of Lumley *v.* Gye, 2 El. & B. 216, and Bowen *v.* Hall, 6 Q. B. D. 333. The whole thing was, it seems, a matter of course to the lawyers of the thirteenth century. Perhaps, too, the judges in the well-contested case of Mogul Steamship Co. *v.* McGregor, 21 Q. B. D. 544, S. C. 23 Q. B. D. 598, would have found something of value in the old precedent.

The precedent is given in the translation by Professor Maitland, pp. 40, 41.

M. M. B.

OF DISTURBING A BARGAIN: — Sir Steward, William [Vintner] of Woodstock, who is here, complaineth of R[obert] Baker, who is there, that wrongfully he supplanted him of a ton of wine of a merchant of Southampton, Bernard Taneys by name, which he [the plaintiff] bought of him [Bernard] for 36s. and gave [earnest] and found pledges to duly pay the said sum on a certain day without any delay; this done, came the said Robert and in despite of W[illiam], who is here, spake so much ill and villainy of him to the merchant and drove his own bar-

gain so that the merchant increased the price of the ton to 40s. payable at a certain day, and thus did he [Robert] raise the price by 4s.; and the said William hired a cart with four horses for a half-mark to carry the ton from Southampton to his house at Woodstock; and when he came to Southampton he found that owing to what Robert had said the merchant was now of another mind, that he would not let him [have the wine] and told him right out that he heard tell so much evil of him that he would give him no credit; and so [William] returned from the port with the cart that he had hired as empty as when he took it thither, and none the less had to pay for its hire on the day fixed for payment; so that wrongfully and without reason did he [Robert] speak evil of and procure evil for him [William] to his damage of 40s. and shame of 100s. If confess, etc.

Tort and force and all that to tort belongeth, defendeth R[obert], who is here, against William of Woodstock, who is there, and his damages of 40s. and shame of 100s. and every penny of it, both against him and against his suit and all that he surmiseth against him; and well he showeth thee that never did he supplant him of the said ton or raise the price against him by 4s or any penny as he surmiseth; and of this he is ready to acquit himself in all such wise as this court shall award that acquit himself he ought. Fair friend Robert (saith the steward) this court awardeth that thou be at a law six-handed at the next [court], etc.

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CAN A MURDERER ACQUIRE A TITLE BY HIS CRIME? — A decision which brings about a just result, but upon wrong grounds, is commonly mischievous as a precedent. A pertinent illustration of such mischief is to be found in *Shellenberger* v. *Ransom* (Nebraska, 1891), 47 N. W. R. 700, in which case *Riggs* v. *Palmer*, 115 N. Y. 506, was treated as a controlling authority. In the New York case a young man murdered his grandfather, in order to prevent a revocation of the latter's will, in which he, the grandson, was the principal beneficiary. Being convicted of the crime, and sentenced to imprisonment for a term of years, he still claimed the property as devisee. The majority of the court, however, decided in favor of the testator's heirs, treating the will as revoked by the crime of the devisee. Two judges, dissenting, were of opinion that the will was not revoked, and that the grandson should keep the property in spite of his crime.

It seems possible to agree with the dissenting judges, that there was no revocation of the will, and also to agree with the majority of the court, that the grandson could not retain the property. By a familiar equitable principle, one who acquires a title by fraud or other unconscionable conduct is not allowed to keep it for himself, but is treated as a constructive trustee for the benefit of the victim of his fraud, or, if he be dead, for his representatives. Accordingly, full effect might have been given to the will, and yet the devisee, as a constructive trustee, might have been compelled to surrender his ill-gotten title to the testator's heirs. In cases like *Riggs* v. *Palmer*, where the controversy is between the criminal and the representatives of his victim, the view here suggested and the view of the court may lead to a different mode of procedure; but they accomplish the same practical result. But directly opposite results are caused in cases where the controversy is between a *bona fide* purchaser from the criminal, and the representatives

of his victim. If no title passes from the deceased to the murderer, his purchaser gets none, however innocent. But if the murderer gets a title, although as a constructive trustee, an innocent purchaser from him will acquire a title free from the trust. This distinction was involved in *Shellenberger* v. *Ransom*.

A father murdered his daughter in order to inherit her property, and, four days later, sold the property to a third person. The court, reading into the statute of descent a disinheriting clause, as the majority of the court in *Riggs* v. *Palmer* had read into the Statute of Wills a revocation clause, decided that the daughter's property did not descend to the father, because of his crime, and consequently declined to consider the question of the purchaser's good faith, although this should have been the cardinal point of the case. It is believed that the so-called fusion of law and equity is largely responsible for such decisions as those under discussion. The advantages of vesting a court with both legal and equitable powers are not to be denied. But when the doctrines of equity are no longer administered in a separate court, it is all the more important not to lose sight of the fundamental distinction between law and equity, — a distinction as eternal as the difference between rights *in rem* and rights *in personam*.

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We recommend to the attention of all our readers Professor Langdell's annual report as Dean of the Harvard Law School.[1] It is now twenty years since the present system was introduced at the school by Professor Langdell, and the report presents a brief history of this period. We quote a few passages: —

"In 1869–70 there were no examinations either for admission to the school or for a degree; and those who received the degree of Bachelor of Laws at the close of that year were required to show only that they had paid the tuition fees for a year and a half. . . . On the other hand, all those who received a degree at the close of the year 1889–90 had passed three successive annual examinations, each upon a full year's work, thus making three years' work in all. All of them had been in the school two full years, and all but four of them had been in the school three full years. Moreover, all of them who were not graduates of colleges had passed an examination for admission, either in Latin or French, and also in Blackstone's Commentaries.

"In 1869–70 the teaching force of the school consisted of three professors. Now it consists of five full professors, one assistant professor, and three lecturers. . . .

"In 1869–70 the amount of instruction given was ten hours per week (sufficient only for a single class). In 1889–90 the amount of instruction was thirty-five and one-half hours per week, and the amount now given is forty hours per week.

"In 1869–70 the total number of students in the school was 156, of whom 99 were in the school only a part of the year. In 1889–90 the total number of the students in the school was 262, of whom all but 33 were in the school during the entire year. . . .

"Prior to 1870–71 the student was expected to acquire his knowledge of law by studying certain prescribed text-books or treatises, and

[1] Annual Reports of the President and Treasurer of Harvard College, 1889–90, Cambridge, Mass. Published by the University, 1891, pages 126–136.

the instruction given consisted of lectures upon these same text-books, — a mode of study and instruction which has become in this school a forgotten piece of antiquity. Now the student makes his own text-book, and the subjects as well of study as of instruction are those original materials of the law which constitute the stock-in-trade alike of the judge, the practising lawyer, and the teacher.

"In 1869–70 the library was so nearly a wreck that it required to be reconstructed almost from its foundations. Now it is believed to be larger (referring only to law-books proper, and excluding statutes), more complete, and in a better condition than any other law library in the United States, with the possible exception of the national library at Washington."

There are also given many more details and tables of statistics, but these extracts are sufficient to show the marvellous progress which the school has made under the guidance of the present Dean and the unqualified success of the system which he originated.

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# RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMIRALTY — WARRANT OF ARREST — ISSUANCE ON SUNDAY. — Where a seaman learned that a vessel was about to proceed to sea, having unexpectedly changed her day for sailing, and that in consequence his wages would not be paid, it was *held* that a court of admiralty would allow a warrant of arrest to issue on Sunday, though the State law forbade the service of civil process on Sunday, and though, under section 914, Rev. St., such State regulation might apply to the law side of the courts of the United States. *Pearson* v. *The Alsalfa*, 44 Fed. Rep. 358.

BILLS AND NOTES — COLLATERAL SECURITY. — Plaintiff was the holder of an interest-bearing note, secured by a mortgage on land, which she had bought from the defendant investment company. The note bore interest-coupons which were payable at the business office of the defendant, and it was the defendant's custom to pay the coupons when due, whether or not the maker had already paid the interest. *Held*, that the receipt and payment of the coupons by the defendant was a purchase by it of the coupons, and not an extinguishment; and that in the event of a coupon not being paid by the maker of the note, the defendant, as holder of the coupon, was entitled to share *pro rata* in the security of the mortgage. *Champion* v. *Hartford Investment Co.*, 25 Pac. Rep. 590 (Kan.).

COMMON CARRIERS — DELAY — VIOLENCE OF STRIKERS. — A common carrier is not liable for delay in the shipment of goods caused solely by strikers, who, by the use of lawless and irresistible violence, prevent his men from working. *Missouri Pac. Ry. Co.* v. *Levi*, 14 S. W. Rep. 1062 (Tex.).

CONSTITUTIONAL LAW — ELECTIONS — CUMULATIVE VOTING. — Const. Mich., which provides for a representative form of government, and gives to every qualified male citizen the right to vote at all elections, impliedly prohibits any elector from casting more than one vote for any candidate for office. Hence, Acts Mich., 1889, No. 254, which provides that each elector may mass his votes upon one candidate for the office of State representative by casting as many votes for such person as there are representatives to be elected in the elector's district, is unconstitutional.

Such act is unconstitutional for the further reason that voters in districts where only one representative is to be elected are placed at a disadvantage. *Maynard* v. *Board Dist. Canvassers*, 47 N. W. Rep. 756 (Mich.).